

MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY

Santa Fe, New Mexico

August 25, 2003

AFTERNOON SESSION

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico was called to order on this date at approximately 4:00 p.m. in City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, Roll Call indicated the presence of a quorum, as follows:

Members Present:

Councilor Carol Robertson Lopez, Mayor *Pro Tem*
Councilor Patti J. Bushee
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor Matthew E. Ortiz
Councilor David Pfeffer
Councilor Rebecca Wurzburger

Members Excused:

Mayor Larry A. Delgado

APPROVAL OF AGENDA

Councilor Bushee moved approval of the Agenda, as published. Councilor Coss seconded the motion, which passed 7-0 by voice vote, with Councilor Bushee, Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Lopez, Councilor Pfeffer and Councilor Wurzburger voting for, and none against. [Councilor Ortiz was not present during this action.]

APPROVAL OF CONSENT CALENDAR

Upon motion by Councilor Coss, seconded by Councilor Wurzburger, the Consent Calendar, as amended, was approved by Roll Call vote, as follows:

For: Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Pfeffer, Councilor Wurzburger.

Against: None.

Not present for this action: Councilor Ortiz.

- a) Request for Approval of Two (2) Grant Applications — Airport Projects and Snow Removal Equipment; New Mexico State Department of Transportation Aviation Division.
- b) Request for Approval of Grant Application — Airport Projects and Snow Removal Equipment; U.S. Department of Transportation — U.S. Department of Transportation Federal Aviation Administration.
 - 1. Request for Approval of Federal Grant Offer 3-35-0037-020-2003
- c) Request for Approval of Grant Agreement — Teen Parent Home Visitation and Support Service Program; State of New Mexico Children, Youth and Families Department.
 - 1. Request for Approval of Budget Increases — Grant Fund.
- d) Request for Approval of Arts Service Contract — Community Arts Development Program (CADP); New Mexico Arts.
 - 1. Request for Approval of Budget Increase — 1% Lodgers Tax Fund.
- e) Request for Approval of Memorandum of Agreement — Ridefinders Program; The New Mexico State Highway and Transportation Dept.
 - 1. Request for Approval of Budget Increases — Program Fund.
- f) CONSIDERATION OF RESOLUTION NO. 2003-66. (Councilor Ortiz and Councilor Wurzburger)

A Resolution Authorizing and Approving Submission of an Executed Agreement for Financial Assistance to the New Mexico Environment Department, Construction Programs Bureau, for the Upgrade and Improvements to the Santa Fe Water Treatment Facility.

1. Request for Approval of Five (5) Grant Agreements — Santa Fe Water Treatment Facility Improvements/Upgrade; New Mexico Environment Department.
 2. Request for Approval of Budget Increases — Grant Fund.
- g) Request for Approval of Procurement Under State Price Agreement — Water Meters for Water Division; Hughes Supply, Inc.
 - h) Request for Approval of Joint Powers Agreement — New Mexico State/ Santa Fe Visitors Assistance Services; New Mexico Department of Tourism.
 - i) Request for Approval of Amendment No. 3 to Professional Services Agreement — Additional Design Work for Cerrillos Road Pedestrian Study and Cerrillos Road Reconstruction Project; Parsons, Brinckerhoff, Quade and Douglas, Inc.
 - j) [Moved to Discussion Agenda by Councilor Bushee.]
 - k) [Moved to Discussion Agenda by Councilor Bushee.]
 - l) CONSIDERATION OF RESOLUTION NO. 2003-67. (Councilor Ortiz)
A Resolution Amending Resolution No. 2002-85 Regarding the Membership of the Information Technology Advisory Committee.

APPROVAL OF MINUTES: August 13, 2003

Councilor Coss moved approval of the Minutes of the August 13 meeting, as submitted. Councilor Chavez seconded the motion, which passed 7-0 by voice vote, with Councilor Bushee, Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Lopez, Councilor Pfeffer and Councilor Wurzbarger voting for, and none against. [Councilor Ortiz was not present during this action.]

PRESENTATIONS

Employee of the Month for August 2003 — Martha Ramirez

Mayor Pro Tem Lopez read the following statement: “Martha Ramirez was employed by the City of Santa Fe eight years ago. She was a very dedicated, fun and community-involved employee. Sadly, we lost Martha in an automobile accident two weeks ago. On her last workday, Martha labored hard to get all the special orders that were approved processed and ready for her fellow employees

to distribute while she was away on vacation. She organized and prepared assorted stacks and piles of different orders and instruction. In fact, Martha was to start her vacation at noon, but didn't want to leave things unfinished. She stayed until eight thirty p.m., cutting into her vacation preparation time. This is an example of the dedication Martha had. She and Albert Olivas, along with a couple of close friends, did go to Cancun, Mexico, to scuba-dive and relax. In fact, on their last night in Cancun, Martha and Albert were engaged.

"Martha was nominated posthumously by several City employees for this award, not just for her dedicated work performance, but for the inspiration she left behind. She volunteered for many City events, especially those for children and families. She also volunteered for community organizations such as Kitchen Angels and Habitat for Humanity. However, there is a catch: the Employee Benefit Committee will be making this check payable to the Memorial Fund for the Children of Martha Ramirez. This fund has been established to help with Martha's children's education."

Accepting the check for the memorial fund was Albert Olivas and Ms. Ramirez' children, Alfonso Ramirez, Kyle Ramirez, and Jesse Duran. The family was also presented with a certificate for dinner at Maria's.

Santa Fe Indian School Trust Property. (Joseph Abeyta, Santa Fe Indian School Superintendent)

Mr. Abeyta introduced colleagues in the audience and stated that he was present to "extend to you a desire to develop a working relationship that hopefully will address any issues that may survive as a result of a change in land status and our presence in the city."

Mr. Abeyta also asked the Governing Body to consider having a meeting on the Indian School campus as part of a positive relationship between the two entities.

In offering background, Mr. Abeyta stated that the Indian School was authorized in 1979 to move from Albuquerque back to Santa Fe, and at the current time the 19 pueblos of New Mexico own the school. He said the program is for boys and girls from grade seven through grade 12, and enrollment is at 620 this year.

Mr. Abeyta stated that President Clinton signed legislation in 2000 that changed the status of the Indian School property to its present status as trust property. He said the 114 acres on Cerrillos Road now enjoys the same status as reservations in New Mexico do.

Mr. Abeyta said the current challenge is to establish infrastructure to manage the trust property, along with a police department, a court, water department, and other agencies.

Mr. Abeyta said President Bush has made a \$50 million commitment to the construction of a new facility. He stated that the existing facility was built in the 1800s and there have been very few improvements, so the infrastructure is crumbling.

Mr. Abeyta offered the Indian School's cooperation to the City in "doing all that is necessary between good neighbors to accomplish mutual goals."

Mr. Abeyta said the Indian School is also offering its athletic facilities for use by the City as part of a cooperative agreement now being developed between the City and the Indian School.

Mayor Pro Tem Lopez thanked Mr. Abeyta for this presentation and said she would convey the wishes of the Indian School to Mayor Delgado so that the Governing Body could visit the Indian School and begin the cooperative process.

Councilor Heldmeyer asked that the Acequia Madre de Santa Fe Association be included, since this group is involved in some of the projects that back onto the Indian School property.

Mr. Abeyta responded, "I think all of those issues are going to require a cooperative spirit in addressing the concerns of the community, and you've got my word in regard to a willingness to sit down and to deal with these issues in the most positive and productive way possible."

Councilor Coss stated that there are plans to develop a trail for the Casa Alegre neighborhood along the Acequia to the downtown, and asked Mr. Abeyta to consider discussions on the siting of the trail through the Indian School property.

Councilor Coss also mentioned the Paolo Soleri facility on Indian School property where concerts are held in the summer, and where the sound drifts into the Casa Alegre neighborhood at night.

Mr. Abeyta responded that the Indian School is looking at ways to modify the facility so that it would be available year round.

With respect to the trail, Mr. Abeyta said, "There is some potential for developing a relationship in regard to uses to an agenda that you may be interested in being a part of."

Councilor Bushee said she looked forward to a cooperative approach in getting federal funds for a bridge across St. Francis Drive to connect the Railyard Park and Indian School in some way.

Mr. Abeyta responded that the Indian School would be very interested in such a joint effort.

DISCUSSION AGENDA

Request for Approval of Amendment No. 4 to Management Services Agreement — Marty Sanchez Links de Santa Fe Golf Course; New Mexico Golf Limited.

Councilor Bushee asked Special Projects Administrator Julie Berman how much the City is subsidizing the MRC fields and golf course at this point. She asked Ms. Berman to discuss this contract as well.

Ms. Berman responded that she started working with New Mexico Golf Unlimited and their attorney, as well as the City Attorney and staff, several months ago on this contract. She said she thought this contract to be very tight and very fair, unlike the original contract and the amendments that followed. She stated that staff would conduct an annual evaluation as part of the contract in order to ensure that New Mexico Golf is in compliance.

MRC Administrative Manager Larry Lujan, responding to Councilor Bushee's earlier question, said transfers in to the MRC by the City this fiscal year were about \$375,000.

Mr. Lujan also clarified that there has been no consideration of factoring effluent costs into the budget.

Councilor Bushee moved for approval. Councilor Chavez seconded the motion.

Councilor Heldmeyer asked if the restroom problems have been fixed, and Ms. Berman responded affirmatively.

The motion passed on the following Roll Call vote:

For: Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee.

Against: None.

Request for Approval of Grant Application — Reconstruction of Runway 15-33 at Santa Fe Municipal Airport; Federal Aviation Administration.

1. Request for Approval of Grant Award and Signatory Provisions.

Councilor Bushee asked Airport Manager Jim Montman to publicly assure the Council that the reconstruction of this runway would help noise abatement at the Airport.

Mr. Montman responded that the reconstruction of this runway was called for in the Council's noise abatement resolution (No. 2000-6). He said it will be constructed to a 100-foot width (50 feet less than it is now) and will not replace the main runway in terms of weight bearing capacity or the like.

Mr. Montman stated that people are somewhat hesitant to use this runway as the condition continues to deteriorate, and it is also hard to see from the air from a long distance, so people fly over areas that they shouldn't fly over.

Mr. Montman stated that, for all of these reasons, the new runway should help with the noise problem.

Councilor Bushee moved for approval. Councilor Coss seconded the motion, which passed on the following Roll Call vote:

For: Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez.

Against: None.

**CONSIDERATION OF RESOLUTION NO. 2003-68. (Councilor Coss)
A Resolution Declaring September 25, 2003, Immigrant Workers Rights Day and Welcoming the Immigrant Workers Freedom Ride, "On the Road to Citizenship" to the City of Santa Fe.**

Councilor Coss moved for approval. Councilor Chavez seconded the motion.

Councilor Coss said he was pleased to be asked to sponsor this, and encouraged and excited that the Freedom Ride will be coming to Santa Fe. He

noted that immigrant workers are becoming an increasingly important part of the local and national economy.

Councilor Ortiz moved an amendment to add the following to the Therefore Be It Resolved section on page two:

4. That on September 25, 2003, the City shall celebrate Immigrant Workers Rights Day at DeVargas Park from 12:00 to 4:00 p.m.

The amendment was accepted as friendly.

Councilor Pfeffer stated that he would vote against this, but stressed that his vote had nothing to do with the content of the resolution, its validity or value, or whether immigrant workers should have the same rights as citizens or not. He said, "What bothers me about this, and has bothered me about similar resolutions in the past, is there is a question as to whether or not this is legitimate City business; it is about influencing federal legislation, and we have elected officials who are supposed to be doing that job... This has not been brought to any committees, it has no staff review, it has no fiscal impact report, it has no definition of what 'on the road to citizenship freedom ride' is, and it has no clarifications.... I think it's inappropriate and damaging to continue to bring resolutions for which we do not have any staff expertise, we have no information, no public hearing, and it's a violation of our authority as Councilors, and it's an abuse of our democracy. And every time we do this, we nibble away at the freedoms we have and the democracy we practice until we'll get to the point where there won't be a country to which other people will want to come."

Councilor Chavez stated that he thought the resolution "fairly harmless." He said this country was built on the backs of immigrants. He pointed out that most of the service industry in Santa Fe now depends on immigrant workers, so it was not something the Council should ignore or expect the federal government to address.

Councilor Heldmeyer stated that this resolution "does a couple of fairly innocuous things," namely, welcoming some people to Santa Fe and declaring a day in their honor. She commented that the City "does this all the time," usually at the request of the Mayor.

Councilor Pfeffer disagreed that the resolution was innocuous, because the Council was being asked to "seek federal reform about legalization programs." He said that should be subject to a public hearing as part of the democratic process.

The resolution, as amended, passed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss.

Against: Councilor Coss.

Consideration of the Sale of the San Juan Chama Water to the Bureau of Reclamation for Silvery Minnow Needs.

Assistant City Attorney Kyle Harwood noted last week's special meeting, where there was a presentation by the Bureau of Reclamation and the Interstate Stream Commission, laying out the various constraints on the water and possible uses of water.

Mr. Harwood asked the Council to give guidance at this meeting on the basic policy of whether the City should sell any water for silvery minnow needs, and what form that would take should the City decide to sell such water.

Councilor Ortiz noted that the Bureau of Reclamation is approaching all potential entities who have San Juan Chama water to give, and are considering doing it on a proportionate or pro rata basis.

Mr. Harwood clarified that the pro rata share is what BOR has withheld from 2003 delivery, and the City of Santa Fe's share is 800-900 acre-feet. He said the water is being held in Heron. He stated that this is a 15% holding of everyone's San Juan Chama contract. He said the premise was that, if the City chose to sell the so-called escrowed amount, it would be released.

In terms of whether a decision should be made tonight, Mr. Harwood stated that Commissioner Keyes anticipates learning the City of Santa Fe's position on a sale by the end of this month.

Addressing timing, Mr. Harwood said Rolf Schmidt-Peterson of the Interstate Stream Commission indicated at the meeting that Albuquerque's sale to the Middle Rio Grande Conservancy District two weeks ago has changed the hydrograph such that, in order to make the silver minnow biological opinion work, the City of Santa Fe's portion would not be used until the end of August.

Councilor Bushee recalled discussing this topic in executive session.

Mr. Harwood responded that the Council did meet in executive session when discussion touched upon the sale of water for silvery minnow needs.

Councilor Bushee asked if it would be appropriate to go into executive session tonight to discuss this matter, since it involves a pending contract with long-term implications.

City Attorney Bruce Thompson responded that it was not appropriate for executive session unless the Council was talking about potential litigation that may arise should the City choose not to sell the water. He said only certain types of contracts can be negotiated in executive session, and this was not one of them.

Mr. Thompson added that, if the Council directs that a sale is appropriate, then additional terms and conditions would have to be formulated and brought back for action at another meeting.

Councilor Bushee moved to consider the sale of San Juan Chama water to the Bureau of Reclamation for silvery minnow needs, with the following conditions:

- 1) The City Attorney's Office negotiate the best terms and conditions for the City of Santa Fe;**
- 2) That the term be short-term;**
- 3) That this come back to the Council each and every time that request is made;**
- 4) That the City Attorney meet with Councilors at next week's Public Utilities Committee meeting in order to suggest terms to put forward; and**
- 5) That the City get a response "some time sooner than later" with regard to the City's long-term lease rights with the Bureau of Reclamation.**

Mayor Pro Tem Lopez seconded the motion.

Councilor Bushee clarified for Mr. Harwood that she wanted staff to bring up the issue "one more time with the Bureau of Reclamation about when we might get an answer, how we can use this at least as a dialogue prompting a response from the Bureau of Reclamation in terms of our need for long-term lease rights."

Councilor Heldmeyer noted that the Bureau of Reclamation made several suggestions at last week's meeting "that if we didn't sell the water, it might be confiscated because of the biologic need." She said that brought up the issue of the City's on-demand water versus its stored water in Abiquiu, and that there might be differential prices paid for those two kinds of water. She stated that she would like to see this pursued as part of the contract negotiations. She added

that she would also like to know the pluses and minuses of those two sources being the source of this water.

Councilor Wurzbarger moved an amendment to direct staff to change the word from “short term” to “one time” for this go-round; and to make the offer in terms of the stored water.

The amendment was accepted as friendly.

Councilor Pfeffer stressed the importance of staff pinning down, as soon as possible, whether or not the San Juan-Chama water is permanent, given that the City will be spending \$100 million on a diversion that would come on line in approximately 2007, yet in 2016 the City’s San Juan-Chama contract would be up, so these two matters are very much connected.

Councilor Chavez moved an amendment that this go to the Finance Committee.

The amendment was accepted as friendly with the stipulation that it go to the Finance Committee for informational purposes before the end of the month.

Councilor Ortiz moved an amendment to add to Councilor Bushee’s first condition that the terms negotiated are no different from the other entities up and down the river; and that the City not be placed in any kind of pro rata position different from any of the other entities up and down the Rio Grande.

The amendment was accepted as friendly.

Councilor Bushee said she thought that the Council was required to vote on contracts in excess of a certain amount, which in this case would be over \$100,000.

Councilor Bushee said this would be money coming in so was not expenditure.

Mr. Thompson responded that he was not sure of the answer to the question and would research it. He said he thought the Council could vote tonight to give authority to go ahead with the contract under the conditions that have been set. He stated that the Council could choose to give authority to the PUC or Finance Committee to approve it, or it could return to the Council for final action.

Councilor Coss said he heard the BOR say that whatever they do not pay the City will go back into the efficiency and health of the river. He stated that he did

not want to tie staff's hands on the negotiations, but would like to hear the BOR's plans for improving irrigation efficiencies and water delivery.

Mr. Harwood suggested that this might be a good topic for discussion at a future meeting with the BOR.

Mr. Thompson asked if he understood Councilor Ortiz' amendment to say "that we would get the same rate, basically, as other entities."

Councilor Ortiz responded that it was about the terms, not rates: "That we're not negotiating ourselves into a contract that's any different from any of the other entities up and down the river percentage-wise – that we're not overextending ourselves vis-à-vis other entities up and down the river."

Mr. Thompson asked Councilor Ortiz if by "percentage-wise" he was saying that the City would not sell a greater percentage of its water than was being obtained from other contractors.

Councilor Ortiz said he was saying that the City "shouldn't be committing twice the amount that some other similarly-placed user would be selling. There's this issue about negotiation strategy.... that the Bureau of Reclamation isn't going to use the City of Santa Fe to negotiate some kind of terms and then go to the other entities and say, well, we got these terms from the City of Santa Fe, and so now you don't have to contribute 500 acre-feet, you only have to contribute 120."

Councilor Pfeffer expressed concern that the amount of water negotiated for sale by the City be in the range of what BOR is asking for.

Mr. Harwood pointed out that Albuquerque technically has sold 0% of their water for silvery minnow needs, and many other Rio Grande communities have sold only 15% of their 2003 allocation: "So if that was intended to be a limit, that put an inherent cap in it. But I think I hear that we're supposed to negotiate the best deal possible up to 50%. The number the BOR came up with was 3,100, and that's over 50% of our 2003 allocation."

The motion, as amended, passed on the following Roll Call vote:

For: Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer.

Against: None.

MATTERS FROM THE CITY MANAGER

Mr. Romero announced that the press conference for the Baca well site has been changed from 1:00 to 2:00 p.m.

Mr. Romero also announced, for the viewing public, that staff would make a presentation to the Public Works Committee tomorrow on the Plaza renovation. He said the public would be allowed to make comments.

Mayor Pro Tem Lopez said she understood the project to build the Plaza bandstand has been held up by the City Manager's Office.

Mr. Romero responded that the bandstand matter has been held up for a day or two while staff obtains information requested by Councilor Pfeffer.

MATTERS FROM THE CITY ATTORNEY

None.

MATTERS FROM THE CITY CLERK

None.

RECESS: 5:30

[Communications from the Governing Body was addressed at the end of the Evening Session.]

EVENING SESSION

The Evening Session of the City Council Meeting was called to order at approximately 7:00 p.m. in City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, Roll Call indicated the presence of a quorum:

Members Present:

Councilor Carol Robertson Lopez, Mayor *Pro Tem*
Councilor Patti J. Bushee
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor Matthew E. Ortiz
Councilor David Pfeffer
Councilor Rebecca Wurzbarger

Members Excused:

Mayor Larry A. Delgado

PETITIONS FROM THE FLOOR

Miguel Castillo

Mr. Castillo, 106 Malaga Road, placed a table approximately 30" high in front of the Council and pointed out that this would be the height of the new proposed Plaza stage. He said the stage would have very poor visibility for people watching performances on the stage because the height was so low. He demonstrated this by placing his daughter on the table and then standing between his daughter and the Council, pointing out that only he, in the first row, would be able to see her dance.

Mr. Castillo urged the Council to reconsider this design, which was "a great disservice to this town." He said the existing stage on the Plaza is 18" higher and measures 40' by 32', while the new stage would have a usable dance area of 27' by 21' – about half the size of the existing stage.

Mr. Castillo said Fiesta Council president Rudy Fernandez asked him to convey his opinion that the size of the new stage was "grossly inadequate."

Kenny Passarelli

Mr. Passarelli, 137 Elena, stated that he was speaking for his wife, director of Los Niños de Santa Fe y Compania, a dance group about to have its sixth year on the Plaza for Fiestas. He said he respected the idea that there was a new vision for

a Plaza bandstand, but thought it would be useful for people to visit performances on the old stage this weekend and evaluate the situation.

Penny Aley

Ms. Aley, 2810 Cerrillos Road, expressed concern that the new Plaza stage “shouldn’t be form over function. It should be functional for the whole community, as it has been forever.”

Orion Bliven

Mr. Bliven, 351 East Alameda, said his sister is a dancer and he has many friends who perform in bands, and he thought the height and size of the new Plaza stage was inadequate, and asked the Council to reconsider.

APPOINTMENTS

None.

PUBLIC HEARINGS

Request from Boutique Wines, Inc. for a Wholesaler License to be Located at Boutique Wines of New Mexico, 2538 Camino Entrada, Suite 102.

City Clerk Yolanda Vigil noted staff’s recommendation that Boutique Wines is required to comply with the City’s litter and noise ordinances as a condition of doing business in the city.

There was no public comment.

Councilor Bushee moved approval. Councilor Coss seconded the motion, which passed on the following Roll Call vote:

For: Councilor Ortiz; Councilor Pfeffer, Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez.

Against: None.

Not present during this action: Councilor Wurzbarger.

**CONSIDERATION OF BILL NO. 2003-28: ADOPTION OF ORDINANCE NO. 2003-29. (Councilor Pfeffer and Councilor Coss)
An Ordinance Creating a New Section 25-2.10 SFCC 1987 Creating a Voucher Program for Water Conservation Methods Including a Rainwater Harvesting Barrel Program.**

a) Request for Approval of Water Wise Water Conservation Rain Barrel Rebate Program.

There was no public comment.

Councilor Pfeffer moved for approval, with the amendments recommended by the Finance Committee [*Exhibit "A" to these minutes*]. Councilor Coss seconded the motion.

Water Wise administrator Maya Martinez stated that the program would be ready to go in approximately two weeks.

Councilor Bushee noted that some people, in anticipation of this program, have gotten hold of some "food barrels" and put some netting over them with a string. She noted that the Water Conservation Committee had required the barrels to be childproof, and asked how that will be enforced.

Ms. Martinez responded that the vendor would be required to verify in writing that the barrel has a child-pet safety device.

Councilor Bushee suggested that staff do one final pass-through of all the vendors who are applying for this program to make sure they are in compliance.

Ms. Martinez responded that this could certainly be done.

Councilor Heldmeyer asked if the removable debris screen required on the barrel will be sufficient to keep mosquitoes out, given concerns about West Nile virus.

Water Division staff member Dan Ransom responded that the screen used on the rain barrels is the same as that used on a patio door.

Mayor Pro Tem Lopez asked if she understood correctly that a tablespoon of vegetable oil in the barrel would stop mosquitoes from breeding in the standing water.

Mr. Ransom responded that this was one way of doing it, and he knew there was another substance that was also effective but could not recall the name of it.

Mayor Pro Tem Lopez asked Mr. Ransom to look into this and inform people about it.

The ordinance passed on the following Roll Call vote:

For: Councilor Pfeffer, Councilor Wurzburger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz.

Against: None.

CONSIDERATION OF BILL NO. 2003-30: ADOPTION OF ORDINANCE NO. 2003-30. (Councilor Pfeffer)

An Ordinance Ratifying a Lease of Approximately 4.9 Acres of Land Owned by the City of Santa Fe and Located at the Santa Fe Municipal Airport, to New Mexico Life Rescue, LLC.

Airport Manager Jim Montman said the only changes made since the last meeting are that the leasehold size has been reduced to 4.78 acres as a result of a recent survey, and the square footage has been changed to 208,217. He said the legal description and lease survey have been added to the documentation.

There was no public comment.

Councilor Pfeffer moved for approval. Councilor Wurzburger seconded the motion.

Councilor Heldmeyer asked if there is anything similar around the hospital to the noise abatement program at the Airport.

Mr. Montman responded that part of the voluntary noise abatement program includes minimum altitudes over the town when possible, although that is performance limited, i.e., it is not possible to get to a high altitude right away when taking off in the middle of town. He stated that New Mexico Life Rescue is practicing and participating in that program in good faith by the routes they take to and from the Airport.

Councilor Heldmeyer stated to the City Manager that requests made of staff, the hospital, etc., during the meetings held about the helicopters have not been followed through on. She said she had a pink slip returned last Friday saying 'We don't understand this.' She commented, "I think we need to talk to those people who don't seem to understand and explain to them what it is that they're supposed to be doing."

Councilor Wurzbarger said she received a letter today dated August 21 from someone in support of New Mexico Life Rescue, but raising issues of concern. She said one concern expressed by the letter writer was that New Mexico Life Rescue president Will Ashcroft stated at the neighborhood meeting at Cesar Chavez Elementary School that, of the 68 flights he had to date flown, only three required a second bed, “but all night, every night, the bigger and noisier helicopter is flown over the sleeping neighborhoods.”

Mr. Montman responded that, while the aircraft has two-bed capability, they are very cramped quarters. He said the additional room allows them to perform medical procedures, although they can work on two passengers at the same time. He added that this helicopter is about the standard size for most rescue helicopters.

New Mexico Life Rescue president Will Ashcroft added that a number of aircraft built for executive transport have been turned into medical helicopters, “and they can’t come close to providing the medical care that our aircraft can.”

Mr. Ashcroft stated that another issue is performance. He said they fly regularly into the mountains and in very hot conditions, and are very limited to the selection of aircraft. He stated that their commitment to the Northern New Mexico community “from day one was to bring in an aircraft that would never come under question from its performance, and be able to provide the maximum amount of care. There is not an aircraft in this state apart from the military that has the capability that ours does to provide care in the air.”

Mr. Ashcroft introduced the pilots and crew of Life Rescue New Mexico and noted that to date they have saved 135 lives.

Councilor Wurzbarger stated to Mr. Ashcroft that the letter writer also referred to a recently published Letter to the Editor stating that the helicopter “could be required to fly higher to mitigate some of the noise.... Numerous other communities require aircraft to get airborne quickly and higher to help mitigate noise over residential areas.”

Asked to respond, Mr. Ashcroft stated that they get to altitude as quickly and safely as possible: “From what I understand, the letter talked about us coming in from a high altitude and making very dramatic turns that would reduce the noise.... We would have to put our helicopter at such extreme angles that the noise would actually be increased because the blades would be put under force, and the folks in the back would be putting themselves in seatbelts and bracing themselves.... Safety is our biggest concern, and at that type of a descent rate, when you get into a thousand feet per minute, if anything should go wrong, the chances of getting out of it are limited.”

Mr. Montman added that the helicopter is already flying at higher than the minimum altitude required by the FAA for fixed wing aircraft.

Councilor Wurzbarger asked if administrative flights or training flights are still being done at night, and Mr. Ashcroft responded that a new pilot has just come on and there will be one or two flights he will do to associate himself with night flying; but otherwise, the only flights taking place at night now are either for refueling the aircraft or going out on a mission.

Responding to questioning from Councilor Chavez, Mr. Montman stated that there was originally a gross receipts exemption in the lease, but that language was stricken. He said the business would now have to pay a 2% gross receipts tax fee along with the regular gross receipts tax rate.

Councilor Chavez commented that the process for public input on this lease was flawed because residents outside the city were not included, which was why he arranged a community meeting at Cesar Chavez Elementary School. He commented that most of the residents who attended were not against this new service coming into the area, but were concerned about being left out of the process. He said he hoped this could be addressed when the Airport Master Plan is implemented, and asked Mr. Montman to stay ahead of the curve by keeping citizens living around the Airport informed before components of the plan are put in place.

The motion passed on the following Roll Call vote:

For: Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz.

Against: None.

**CONSIDERATION OF BILL NO. 2003-31: ADOPTION OF ORDINANCE NO. 2003-31. (Councilor Ortiz; Councilor Bushee; Councilor Heldmeyer; Councilor Wurzbarger; Councilor Pfeffer.)
An Ordinance Amending Section 25-2.6 SFCC 1987 Regarding Indoor Water Conservation, Increasing the Fines for Failure to Comply with Retrofitting Requirements for Existing Commercial Water Users.**

There was no public comment.

Councilor Ortiz moved for approval, with the following two amendments recommended by the Finance Committee:

On page 3, line 7, delete the date "January 1, 2003" and insert the date "September 8, 2003"

On page 3, line 12, after the word "in" insert the following: "Exhibit A, Rule 9, paragraph D.3."

Councilor Wurzbarger seconded the motion, which passed on the following Roll Call vote:

For: Councilor Wurzburger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz.

Against: None.

Not present during this action: Councilor Pfeffer.

**CONSIDERATION OF BILL NO. 2003-25: ADOPTION OF ORDINANCE NO. 2003-32. (Councilor Bushee and Councilor Chavez)
An Ordinance Repealing Section 14-9.3(C) SFCC 1987 and
Creating a New Section 14-8.14 Regarding Impact Fees, and
Amending Section 14-12 SFCC 1987 Regarding Definitions.**

Mayor Pro Tem Lopez asked for public comment, both for and against.

Gary Ehlert, 1576 Luisa Street, came forward. He stated that he was the executive officer for the Santa Fe Area Home Builders Association and was "chagrined at the process." He stated that he asked to be able to work with the City in coming up with an ordinance "that we all could live with for the benefit of the citizens of Santa Fe," and since that time, he has not heard from either of the sponsors of the ordinance nor staff. He said he therefore would take no position on the ordinance beyond taking it back to the Home Builders Association, which represents 720 member firms.

Mr. Ehlert reiterated his offer to work with the City "in implementing something that would make sense." He pointed out that members of the Capital Improvements Advisory Committee who may be members of the Home Builders Association do not speak for the Association.

Patrick Thomas, 3 Ocotillo Place, came forward and stated that he was chairperson of the Santa Fe Association of Realtors Government Affairs Committee. He said the Association is in favor of increased impact fees "but not in the present form." He asked that the fees be phased in over a five-year staging at approximately 20% per year.

Mr. Thomas said he regularly meets with individuals and families seeking affordable housing, and he has to inform them that they don't qualify for it, yet their income is insufficient to qualify for a market rate home in this area.

Mr. Thomas recalled it being reported at the last hearing on this issue that there were 97 homes in the city of Santa Fe between \$100,000 and \$167,000, which was erroneous unless one included Santa Fe County. He said there were only 26 in the city.

Mr. Thomas stated that, while wealthier people would be able to absorb the increased impact fees, others would not and consequently would not be able to "move up" into a bigger home.

Beverly Chapman, 99 San Marcos Loop, president of the Santa Fe Association of Realtors for 2003-04, and part owner of Chapman Homes and Chapman Realty, came forward to express concern on the part of the Association of Realtors regarding the proposed 300% increase in impact fees. She said the Association supported, however, "a realistic reevaluation of the City's impact fees on new developments." She said imposing a \$9,500 increase (including toilet retrofits) to the cost of new homes will inordinately affect low- to middle-income working families and will stop them from being able to "move up."

Ms. Chapman echoed Mr. Ehler's offer to work with the City to devise a system that would offer parity.

Karen Walker, 523 Abeyta Street, came forward to speak in favor of the impact fees. She said they were long overdue. She said that she was a member of the Santa Fe Association of Realtors, as was another member of the Capital Improvements Advisory Committee, "and I want to assure my fellow members that not only were there two brokers, there were two developers, there were builders, there were road builders. The majority of people on the Committee were related one way or another to the building industry."

Ms. Walker pointed out that the Committee met for a year, and their agendas were always in the newspaper and the meetings were open to the public. She said, "We didn't hear from any of the people who've spoken recently on the subject who say, 'Now we want to get involved.' It strikes me as strange that we met for over a year and nobody came." She said one of the most valuable contributors to the Committee was Bob Taunton of Rancho Viejo, who showed up at the meetings and offered a lot of good input.

Ms. Walker noted remarks by Mr. Thomas that there were only 26 homes in the city limits in a certain price range. She said that, when she presented her figures a week or two ago to the Council, she was referring to existing homes. She said the Council needed to keep in mind that if somebody buys an existing home, they do not

pay impact fees. She stated that the software that Santa Fe Association of Realtors uses, which is where she got her numbers, has geographic areas. She said she ran four areas plus Airport Road, and found 190 properties available between \$100,000 and \$200,000. She stated that this did not include “for sales by owner.” She said the point is there are alternatives to people having to buy brand-new housing.

Joe Ortiz, 99 San Marcos Loop, a commercial broker with Realty World, stated that Ms. Walker’s remarks do not represent the views of the Santa Fe Association of Realtors. He also stated that there are only 23 homes in the city between \$100,000 and \$150,000.

Neva Van Peski, a member of the Capital Improvements Advisory Committee, stated, “I am in favor of the impact fees. I am not in favor of delaying them or phasing them in over a long period. The problem is that the City has been without adequate impact fees for a long time. If you suddenly raise water rates or electricity rates, I can understand phasing them in, because this is something that people have to pay out monthly, and they may have to adjust their budget, and so phasing it in makes sense. But when you talk about phasing in a capital expenditure, it doesn’t make sense to me.

“The fees are constructed according to an elaborate set of rules that were put in place to benefit the construction and real estate industries, so I think it’s rather late in the game for them to come forward and say that they want to work with you in order to make them fair. What they have to be was fairly detailed and specified by the legislation, and that’s what we came up with.”

This concluded public comment.

Councilor Bushee said she hoped those who oppose these impact fees would recognize them as another way for the City to get needed infrastructure throughout the city, including roads, fire protection, signalization, and other basics.

Councilor Bushee pointed out that the water utility extension charge is already \$2,000, and that had to go up because “we know that the true cost of getting water here, nobody would be able to take that on right away, including what we have to get for the San Juan-Chama water.”

Councilor Bushee stated that the wastewater utility extension charge has been “miserably low — I’ve even had developers come to me and say, ‘we probably ought to get a correction in here so that it doesn’t whack us all at once at some point down the road.’ ”

Councilor Bushee said the building permit fees happened again this year “to balance the budget because we’re miserably behind in the Planning and Land Use Department in terms of revenue to be able to process those fees.”

Councilor Bushee said the toilet retrofit administration fee and retrofit costs represent the highest increase the City has had in the last year in terms of impacting construction: “We all know why that fee is in there — in order to try to take care of some of our conservation efforts here in the city and in the immediate sense of getting water here.”

Councilor Bushee stated that the proposed fees are “conservatively within the bounds of state law,” and this would be the first increase in impact fees in more than ten years.

Councilor Bushee commented that her biggest concern was that Santa Fe County has chosen not to participate, which was unfortunate and unfair in many ways. She predicted that their constituency would let them know over time when their basic infrastructure needs were not being met.

Councilor Bushee moved for approval of Ordinance 2003-32, with a two-page list of amendments submitted by Councilor Chavez [*Exhibit “B” to these minutes*] and a one-page list of amendments submitted by Councilor Wurzburger [*Exhibit “B.1” to these minutes*].

Councilor Chavez seconded the motion.

Councilor Wurzburger stated that she has always taken the position that the City needed to increase its fees, and has never stated to the contrary. She said she was still concerned, however, over her belief that this is a very regressive tax and that it will disproportionately affect not only people moving into affordable housing but also the population who do not qualify for it.

Councilor Wurzburger noted that 67% of the permits issued by the City are for houses less than 2,000 square feet — while some of those might be expensive homes on the Eastside, “we know intuitively that the majority are not.” She stated that her amendment gives the City one year to develop the information on impact fee revenues and to put the charge on the Capital Improvements Advisory Committee to come back and show the Council what effect this has had on people moving up into another home.

Councilor Wurzburger thanked Ms. Walker for her statistical information, but noted that many of these existing homes need renovations ranging from \$30,000 to \$60,000. She said this option did not seem to be a very viable one because people in that category do not have the money to do those renovations.

Councilor Pfeffer said he appreciated Councilor Chavez’ phasing amendments, but noted that they phase in 100% of the fees in nine months, which was “not in the spirit of what we talked about the last go-round.” He said the idea was to lengthen

the phasing period so people going into single-family homes could bear the fees more easily.

Councilor Pfeffer asked City Attorney Bruce Thompson about the viability of collecting the money through a property tax applied to new homes, which would allow the City to bond against the tax, do the infrastructure improvements, and then people buying homes could pay it out over time “rather than boom, \$9,000 more on your single family residence.”

Mr. Thompson explained that the Development Fee Act sets out the specific charges that can be charged against a new development to pay for infrastructure improvements. He said doing a property tax on specific developments would represent an attempt to get around the Act’s provisions and could not be done.

Councilor Pfeffer asked if, under the Act, the City could apply the collection of the fee over time from the residents of the new homes.

Planning director Reed Liming responded that the fees under the Act are to be assessed as early in the process as possible and are collected late through building permits, as stated in the Act. He added that there would be plenty of work for staff in administering this ordinance as currently written, and he was not sure staff would be able to take on the additional work of collecting small amounts of money from people over an extended period of time.

Councilor Pfeffer proposed amendments to Councilor Chavez’ amendments No. E(c), and (d), imposing impact fees at 50% in 2004, 75% in 2005 and 100% in 2006.

The amendments were not accepted as friendly.

Councilor Pfeffer then moved these amendments.

The amendments died for lack of a second.

Councilor Pfeffer stated that he was concerned about the effect these impact fees would have given that they would be imposed over a nine-month period instead of being phased in over a few years.

Councilor Pfeffer said it was a good idea to exempt affordable housing, but pointed out that somebody else will have to pay for that. He stated, “What we are doing is cumulatively raising the cost of housing in Santa Fe over and over and over again. To say that there’s available stock out there to move up is mythological. I cannot afford to buy a home in my district, let alone move up into one.”

Councilor Heldmeyer commented that the City has not raised its impact fees for ten years, and when they were passed ten years ago, “they were laughably low, and I think most people in the building community off the record agree with that.” She said infrastructure in Santa Fe has suffered over the past few years because of other capital improvements priorities the City has had to deal with.

Councilor Heldmeyer thanked staff, the consultants and “especially the long-suffering hardworking [Capital Improvements Advisory] Committee, who had to deal with some very specific and esoteric information from the State law, and some of the things which were very good ideas that came from the Committee, that came from some of the Councilors... just aren’t possible under the State law.

“And I will point out that, under the State law, we were required to have a lot of people from the building, development and construction industries on this committee. I think it’s more than a little disingenuous now for people to come in and say, ‘oh, gee, even though people who sat on it were members of our association, even though our political representatives followed what was going on in this committee, we had no idea.’ Basically, they’re not happy with what came out of it... But I think most people in Santa Fe want growth to help pay for itself, and I think that’s what this bill does.”

Councilor Ortiz noted that the Capital Improvements Advisory Committee’s list of comments includes a comment that “urges Santa Fe County to assess and collect impact fees for arterial roads and regional parks throughout that portion of the Santa Fe 5-mile area beyond the City corporate boundaries.” He asked if it was assumed throughout the process that the City would assess for neighborhood parks, signals, police and fire. He said the City has been faced with panoply of impact fees in these areas, as well as an increase for regional parks and roads. He asked if the Committee made a distinction between City and County fees, and why it seemed like Santa Fe County didn’t have to enact the same level of fees the City was being asked to enact.

Mr. Liming responded that the study was set up to look at all capital improvements within the five-mile boundary, and the understanding from the beginning was that the City in essence would be responsible for the urban area, and the County would be responsible for the area outside that. He stated that the consultant recommended that the County look at regional parks and roads for potential impact fees.

Mr. Liming said it became clear as the process moved forward that the County was not interested, although there was not really a discussion to that effect.

Committee chair Karen Walker clarified for Councilor Ortiz that the comment about water from the Committee “was a request that you look at purchasing, and conjunctive rights with utility extension charges, if there is enough that is forthcoming

from that — preferably rather than leasing. Leasing may be what we're stuck with. I know you've all been faced with the numbers this week, and they're shocking. It's been that way since the eighties, except every time a development is approved, it gets worse. And the utility expansion charge is crucial, to spend it, if possible, on purchase of water rights."

Ms. Walker stated that the first comment on the list was to send "a pointed message to the County, because even though they had five members of the Committee — each County Commissioner appointed one — the County refused to play. And according to Bob Taunton, who was one of the County designees, from Rancho Viejo, it's not even on their radar.... because they didn't need it, because he felt that, in his experience, when a development is going in in the County, they can extract absolutely anything they want and have successfully done so, at least with Rancho Viejo. So they thought to themselves, possibly, why set up another level of bureaucracy when we can get all we want at the planning stage or some other stage?"

Councilor Ortiz stated that he did not agree with the assessment "that what we are doing here by trying to consider a phase-in is really trying to cut anything off. I also disagree with the assumption that, for the past ten years, our capital improvements have been slack because we haven't had these fees assessed. There have been other priorities that the City put in place in the past ten years that caused our capital improvements program to fall by the wayside, and it's only been recently.... that we've become more responsible with some of those bigger ticket items that we went on a spending splurge on in the 1990s."

Councilor Ortiz stated that, while it may be "politically appropriate" and the "term *du jour*" to call it "impact fees on development or on growth," he saw this as "an assessment on people's houses." He commented that people trying to "move up" from an affordable house into a larger house because they need another bedroom for a growing family "are going to have a problem because they're looking at about \$10,000 to \$12,000 in soft costs — money that doesn't go into their house, but that has to be forked out. It's those concerns that lead me to believe that we need a longer more graduated phase-in program so that people can qualify for that second house and get that second bathroom or that third bedroom."

Councilor Ortiz proposed an amendment to Councilor Chavez' amendment No. 2, paragraph c, calling for a four-year phase in period in which there is a fee schedule of 25% in 2004, 50% in 2005, 75% in 2006 and 100% in 2007.

The amendment was not accepted as friendly.

Councilor Pfeffer seconded the amendment.

Councilor Ortiz asked Mr. Liming if there would be a problem with the methodology of phasing in the fees as he was proposing.

Mr. Liming responded that he didn't think that was necessarily a problem, although staff would have to have specific dates.

Mr. Liming added, "I think if you're going to do a phasing, everyone needs to be according to whatever percentages are come up with, but keep in mind that much below 65% of this new fee schedule, some commercial developments will be paying less in impact fees than they pay under the current schedule."

Mr. Liming said he would not suggest that the Council try and split land uses based on percentages.

Councilor Ortiz asked which categories would be paying less. He said perhaps a floor could be established for those. He stated that he did not know of anything in the Development Fee Act that would prohibit language saying that fees could be phased in at 25, 50, 75 and 100 percent, or as currently in existence, whichever is higher.

Councilor Ortiz asked City Attorney Bruce Thompson if there has been any legal challenge to the way the City is assessing impact fees or the amount of the fees, and Mr. Thompson responded that he would prefer not to make a public comment with respect to that issue. He said it would not be inappropriate, however, to say that "it would be the greater of 25% or the existing amount, or 50% or the existing amount," etc.

Councilor Ortiz amended his motion to include language that says 25, 50, 75, 100 percent for 2004, 2005, 2006, and 2007, or the impact fee that is currently in place now, whichever amount is higher.

Councilor Pfeffer seconded the amended motion.

Councilor Coss observed that a single-family home of 2,000 square feet pays current fees of \$3,797 and under the ordinance would pay \$6,635, a difference of \$2,838 — not \$9,000 or \$10,000 as pointed out by some speakers during the public hearing tonight. He pointed out that even that is phased in for four years for about 600-700 houses. He commented that he could not support the amendment: "I think we're way past time doing this... and phasing in the phase-in is too much for me."

The amendment was defeated on the following Roll Call vote:

For: Councilor Lopez; Councilor Ortiz; Councilor Pfeffer.

Against: Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Wurzbarger.

Councilor Ortiz asked Mr. Liming why there were no site requirements in the ordinance, e.g., impact fees from phase three in Nava Adé will go into City coffers with no guarantee that the money would be spent on that side of town.

Mr. Liming responded that it would allow flexibility, and the consultant advised that that would be the best way to do it for a city this size. In much larger cities, he said, a case could be made for creating districts, etc.

Mr. Liming added that, when staff went through the capital improvement projects and totaled the costs, about 84% of the costs were essentially in Districts 3 and 4, and that is where 81% of the growth is expected and where impact fee revenues will come from: "So we believe that overall there is a nexus between the capital improvements planned and where the impact fees are coming from."

Councilor Ortiz moved to add a new paragraph L on page 14 stating:

That any and all impact fees collected shall be apportioned according to the geographic area that they have been collected.

Councilor Ortiz asked Mr. Liming to comment on the proposed language, and Mr. Liming stated that it could require redoing the CIP study.

Councilor Ortiz cited Mr. Liming's remarks that 84% of CIP costs would come out of Districts 3 and 4, and that impact fees from that area would amount to 81%. He stated that, if that nexus has been established, he could not understand what would prohibit that nexus from being specifically in the ordinance.

Councilor Wurzbarger seconded the motion for purposes of discussion.

Asked to comment, Mr. Thompson said he would be very hesitant to add that language without having a legal analysis, because the study was based on a citywide analysis, and the idea was to collect citywide.

Councilor Ortiz moved to postpone this matter for two to four weeks to allow time for the City Attorney to research the issue.

The motion died for lack of a second.

The amendment was defeated on the following Roll Call vote:

For: Councilor Ortiz.

**Against: Councilor Chavez; Councilor Coss; Councilor Heldmeyer;
Councilor Lopez; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee.**

Councilor Pfeffer expressed concern about the commercial impact fees because it would raise the cost of fast food, convenience store items, groceries, movie tickets, and so forth. He commented, "Put that together with living wage, put that together with retrofitting, put that together with everything, put that together with affordable housing. I think we're creating this big space between rich and poor. We're trying to be fair, and we know new construction has to pay for new infrastructure, but I think the reality on the ground looks like the more we give to that which we call low income and affordable, the harder it becomes to be in the middle. Even if it isn't direct, where you can't apply the impact fees and make up for them at the high end, somebody's going to pay for this."

Councilor Chavez called for the question. The motion was seconded by Councilor Bushee and passed on the following Roll Call vote:

For: Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez.

Against: Councilor Ortiz.

The ordinance, as amended, passed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Lopez; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez; Councilor Coss.

Against: Councilor Ortiz.

**Case No. H-03-55 – APPEAL. 428 Sandoval. Richard Yates is
Appealing the Historic Design Review board’s May 8, 2003, Denial
of a Request for a Height Exception at the Non-contributing
Building Located at 428 Sandoval Street in the Historic Transition
District, to Raise the Building’s Parapet from 19’6” to 22’0” as
per Section 14-5.2D(9) SFCC 1987. The Maximum Allowable
Calculated for the Streetscape is 19’5”.**

Historic Preservation Planner James Hewat reported as follows: “At their May 8, 2003, meeting, the Historic Design Review Board voted 6-1 to deny an application to raise the height of the non-contributing building at 428 Sandoval from 19 feet six inches to 22 feet as per the City’s ordinance regarding the regulation of height in the historic districts.

“Because the proposal exceeded the maximum allowable height for the streetscape by two feet, seven inches as calculated by staff, the applicant requested a height exception from the Historic Design Review Board under Section 14-5.2C(5)(c)(1-6) of the code. This provision of the Historic Districts Ordinance requires that the Board shall make a positive finding of fact that the exception complies with all six criteria. The Board’s finding was that the exception did not comply with all six criteria as required, and thus denied the application.

“In response to the Board’s action, the applicant has filed an appeal on the grounds that the Historic Design Review Board erred in its interpretation of the ordinance and its positive finding of fact related to the six criteria listed in Section 14-5.2(C)(5)(c) of the code.

“Staff recommends that the Governing Body uphold the decision of the Historic Design Review Board.”

Persons against this appeal were asked to address the Council.

Greg Walke, 110 West San Francisco Street, was sworn. He stated that, when architects, builders and owners are asked what they want from the Historic Design ordinance or any ordinance related to building, “what comes up the most often is that they want clarity in the ordinance and consistency in how the ordinances are applied. The height ordinances are complex. I think they need to be complex to represent the diverse nature of our streetscapes, but basically they come down to a very simple mathematical formula. You end up with a number. Nineteen feet, five inches. I don’t know how that could be clearer.”

Addressing consistency, Mr. Walke said, “If you don’t like the Historic District laws, then change them; but unless you change them, please by all means apply them evenly to everyone. Don’t make exceptions for people who bother to appeal to

the City Council while making everybody else follow the rules just because they didn't appeal."

Craig Lamm, 117-1/2 Martinez Street, was sworn. He said he supported Mr. Walke's comments, adding that "I think there's a dangerous precedence in people appealing the H-Board, and I'm asking you to support the decisions of the H-Board... so that we don't have more and more of these cases being appealed, which is what's happening all the time."

Sara Melton, 408 Sosaya Lane, was sworn. She read a letter from Robert and Rose Mary Stearns, 329 Sena Street, who recently appeared before the H-Board with an application. The letter noted that the Council in numerous instances has lately overridden the decisions of the H-Board, and urged the Council to uphold the Board's decisions "and rule against the Board only in the rarest of cases when the evidence is overwhelming that the Board has misinterpreted the Historic Styles Ordinance." *[Letter submitted as Exhibit "C" to these minutes.]*

Ms. Melton stated, "Frequently when exceptions are asked for, it's very difficult to figure out exactly how these exceptions should be looked at. I urge the Council to uphold the decision of the H-Board, who has considered all of the requirements for the height exception in this case."

This concluded comments against the appeal.

Appellant Richard Yates, owner of the property at 428 Sandoval, residing at 1242 Canyon Road, was sworn. He submitted and read a letter, to which were attached three letters of support. *[Submitted as Exhibit "C.1" to these minutes.]*

Mr. Yates characterized his situation as a "Catch-22... the city code demands one thing, a national code demands another, and good construction techniques require something else."

Mr. Yates' letter stated that the UBC mandates that any new building that sits directly on a property line must have a two foot six inch high parapet; and since the west wall sits on the property line, the city's code enforcement department will require a 30-inch parapet. The letter continued that "since the roof does not drain properly, we plan to correct the way the roof slopes to the roof drains that lie in the middle of the roof. This additional roofing will raise the existing roof by twelve inches at the perimeter walls. Since a fire rated parapet height is measured where the parapet contracts the roof, we will have to build on the west wall a three foot six inch wall to meet the building code. We increased the height to four feet to accommodate a Territorial brick coping in order to meet historical design codes...[but] the height limit [in the Historic District] is set at nineteen and a half feet, which means I can only add one foot the building."

Architect Michael Duty was sworn. He pointed out that this was “not a historical building, this is not a request to intensify or expand the building in any way. This is an attempt to comply with other provisions of both the historic ordinance and the Uniform Building Code.”

On the matter of the height allowable under the ordinance, Mr. Duty stated that he was first told it was 19 feet six inches, “and I will digress and say that I’ve called the City twice in the last two months to ask for height calculations at this location, and I’ve gotten two other answers. It depends on whether you calculate Garfield Street or whether you calculate along Sandoval. Both of the other answers were less than 22 feet, but they varied as much as up to 21. So the height calculation is not always that exact a science.”

Mr. Duty presented drawings and noted that the building immediately to the north of 428 Sandoval is 26 feet high.

Mr. Duty stated that “this is precisely the type of case for which the exception process was written. There were those of us who worked very hard when the ordinance was written, trying to point out the various discrepancies that can occur all over the district. We were assured by staff and by the proponents of the historical ordinance at the time that the exceptions were going to be set into the code so that the Board could exercise due process and common sense on these issues....

“The HDRB should have taken these facts into consideration and granted the exception. In denying the exception, the HRDB based its decision on a very narrow interpretation of the exception requirements. It says that exceptions to height, pitch, scale, massing and floor requires a positive finding of fact related to the following criteria, and there are six criteria. The one that was mentioned as being the most difficult was criterion number four. It states, ‘Are due to special conditions and circumstances which are peculiar to the land or structure involved and which are not applicable to other lands and structures in the related streetscape.’ Clearly this proposal meets this provision even if it is applied literally. This structure uniquely has no parapet on a flat roof, which is a special condition. And the issue of code conformance is uniquely applicable to this structure and to no other structure in the related streetscape.”

Mr. Duty said the people who came forward tonight to speak against the appeal “are not familiar with the issues of the building.” He said the HDRB did not “exercise common sense and instead followed a very harsh interpretation of the guidelines, and I think that’s what they are — guidelines for the exception.”

The public hearing was closed.

Councilor Heldmeyer noted Mr. Duty's remarks that he tried three different times to get a recommended height for the building and got three different answers. She asked Mr. Hewat to comment.

Mr. Hewat responded that he was not aware that Mr. Duty made formal requests for height calculations at the subject address. He said another staff member might have done them.

Councilor Heldmeyer asked Mr. Duty whom he spoke with in Mr. Hewat's office, and Mr. Duty responded that he spoke with Dave Rausch, "and we were having a discussion about the height on this, and originally I was trying to get an answer as to why there was a 26 foot building; and in that process, I said, what is the allowable height on my site, and he said he would call me back. He did the calculations and he called me back and he said it was 20 foot. And I said, well, we were given 19 foot six, and I said, did you take into account the buildings on Garfield Street, and he said, well, if you count those buildings, and we went over them. And I said, what about the five story building right down the way, and he said, well, if you count that, you come up with about 21 feet, and I said, well, okay, it's not important because none of your answers would allow me 22 feet. But I thought it was interesting that we got the different interpretations."

Councilor Heldmeyer asked Mr. Hewat to explain the difference between the hypothetical calculations by Mr. Rausch and the way the height is actually calculated.

Mr. Hewat first stated that Mr. Rausch has only been working for the City for two months and has not been doing many height calculations. He went on to comment, "I think if you say, well, can you throw in the six-story building or the 26-foot building across the street, I would say no. And the code is very clear about that. I think the height calculations we do are very consistent. There are occasions when they might come in an inch or two different if you were to do them according to a radial, for instance, which we do if the property is not on a street front, but that was not the case here."

Councilor Heldmeyer asked Mr. Hewat to discuss how there can be a 26-foot building across the street, and Mr. Hewat responded that it was constructed prior to 1996, which is when the height ordinance was adopted.

Councilor Heldmeyer said the item at issue appears to be criterion #4 ("Are due to special conditions and circumstances which are peculiar to the land or structure involved and which are not applicable to other lands and structures in the related streetscape"). She asked Mr. Hewat if, in talking about "related streetscape," he was talking about a particular style within the streetscape.

Mr. Hewat responded, "I think this is more relating to physical conditions, actually, but yes, I think that would be taken into account as if there is a stylistic difference. This is a Territorial Revival building with a parapet."

Councilor Heldmeyer noted Board member Steve Flance's remarks in the H-Board minutes that "if this building had come along several years ago, it would have been required to put up a parapet." She said that was true, because at one point the City had a styles ordinance and not a preservation ordinance; and when then-historic planner Mary Ragens rewrote the code, she changed it to be a preservation ordinance, "which means that each building stands on its own style."

Councilor Heldmeyer also stated that, when the height ordinance came in, the development community said they did not like existing laws that required judgment on the part of the H-Board, and said they wanted something more "specific, more calculable.... and it was a very specific decision by the Council at that time to do that."

Councilor Heldmeyer moved to uphold the H-Board and deny the appeal. Councilor Coss seconded the motion.

Councilor Wurzbarger asked Mr. Hewat if she understood correctly that the height requirement being imposed on the appellant was in conflict with City Code.

Mr. Hewat responded that this was correct. He said the law was not completely clear on that; however, in the UBC there is a provision that "a building official may make a special exception when there's a historic issue at hand." He added that, if the applicant were to put a one-hour fire rated roof, there would be no need for a 30-inch parapet. He stated that, because of the historic issue, he thought a fire-rated roof would be preferable to the parapet.

Councilor Wurzbarger commented that the H-Board minutes seemed "sketchy" and did not reflect any findings on the six criteria. She said she would be interested in knowing if there was discussion on the first criterion as to whether adding the parapet would damage the character of the district.

Mr. Hewat responded that there was discussion at the H-Board, which he would attempt to reconstruct.

Mr. Hewat stated that, with respect to the first criterion, "I would say that the argument they made was that, by raising the height of that building, you were then raising the average height of the streetscape and the district as a whole." Mr. Hewat commented that the code was specifically written to prevent that, although "it does creep ever so slowly the way it's written right now."

On the second criterion (allowing an exception would prevent a hardship to the applicant or public welfare), Mr. Hewat said, “I think the H-Board was saying that there were alternatives to building a parapet on the building, and therefore it would not cause a hardship to the applicant because he could re-roof and make those improvements to the building, meeting the UBC and historic code as well.”

Mr. Hewat stated that the third criterion, which discusses diversity in neighborhoods and housing in particular, “I think also talks about encouraging diversity of other kinds as well — activity in the neighborhoods — and they didn’t find that disallowing the exception would inhibit that diversity commercially.”

Mr. Hewat stated that Mr. Duty covered criterion #4 in his presentation (conditions or circumstances which are peculiar to the land or building): “I think there are a lot of buildings that don’t have large parapets in the city, and I think the intent, as well as meeting fire code, is to conceal rooftop equipment which is on there, and the H-Board would say perhaps there’s an alternative to placing the mechanical equipment on top of the building.”

Councilor Wurzbarger asked if she understood that the H-Board discussed putting the parapet further back or screening.

Mr. Hewat responded that this was correct. He stated that screening would be an alternative to a parapet, “and I think a preferable one to a parapet that goes around the building — you’d have something in the middle with screening around it because you’d have less visual impact.”

Addressing the fifth criterion (special conditions and circumstances which are not a result of the actions of the applicant), Mr. Hewat said that was similar to #4. He stated that the H-Board felt there were alternatives that the applicant could explore to meet both the historic code and the UBC.

Addressing the sixth criterion (intent of the historic code, which is to preserve the unique historic character of the city of Santa Fe), Mr. Hewat said, “I think the rationale there is that, by allowing a height exception, you are allowing a creep of height within the historic districts.”

Councilor Wurzbarger asked Mr. Duty if he understood that a one-hour fire rated roof could be installed rather than the parapet.

Mr. Duty first pointed out that it was “categorically impossible for there to be creep because if you understand the code, no building in the city of Santa Fe over one story counts in the height calculation unless it’s historic.”

Responding to the question, Mr. Duty stated that the screening that Mr. Hewat referred to would be as high as the parapet and would have to be “pretty big because the mechanical equipment is spread out all over the roof.”

Mr. Hewat explained that there were two issues: 1) relating to the parapet on the west wall, where there is zero lot line, which could be solved with a one-hour rated roof; and 2) mechanical equipment on the roof. He said the H-Board was asking that alternatives to both be explored, but in particular to the placement of the rooftop equipment on the roof, as opposed to somewhere beside or behind the building, which is often done.

Councilor Wurzbarger said she was confused. She stated that she had been under the impression that this was about existing mechanical equipment on the roof, not about future equipment. Mr. Duty said that was correct.

Mr. Hewat apologized, saying he had been under the impression that the mechanical equipment was to be replaced with new equipment. He stated that, in that case, screening would be the alternative or to paint the mechanical equipment in a color that would blend in with the building. He added that he did not think the equipment “terribly noticeable right now... if you look from the side of the building it’s more apparent then from Sandoval.”

Councilor Wurzbarger asked Mr. Duty if this was new information, and Mr. Duty responded that the screening has been suggested already, but that decision is being appealed in favor of a parapet. In terms of the one-hour roof suggestion, Mr. Duty said he did not know the cost impact, but was sure it could be done.

Councilor Bushee asked if the applicant has gotten cost estimates on the one-hour roof, and Mr. Duty responded that he had not, but pointed out that the roof would be 4,000 square feet.

Councilor Bushee commented that it seemed odd that no one from Permit & Development Review was present to respond to questions about what is involved with a one-hour roof.

Councilor Bushee said she would suggest a two-week postponement so Code Enforcement staff could be present to respond to questions about the roof and so the applicant could explore the alternatives of the one-hour roof and screening and provide information.

Councilor Bushee so moved. Councilor Wurzbarger seconded the motion.

Councilor Pfeffer said he opposed this postponement because he has been an architect for 30 years and could answer the questions himself. He stated that it was

important to understand that a one-hour roof was not roofing per se — rather, it would be a ceiling-roof structure all the way from the top floor ceiling to the roof.

Councilor Pfeffer stated that it may or may not be true that the roof would be an alternative to the parapet. He said he was a bit confused about what the UBC would require. He said that, if this were a new building, or if a parapet was proposed, his guess was that a parapet would be required for the entire surround of the building for the purpose of guardrail, and the height would be 30 inches at minimum.

Councilor Pfeffer said he also understood, as an architect, “that safety issues have the tendency to override historic issues. In fact, in the UBC, that’s the only thing that can override a historic issue. And I’ve testified in court as an expert witness in which a safety issue was pitted against a historic issue, and it is the only thing that does override the historic issues in those cases.

“My suspicion in this case is that, if this were a new building, or if there were significant renovation to it, the parapet would actually be required by the building department — not just on the one side where there’s a zero lot line. In the circumstance when it is a zero lot line, for that part of the code which deals with adjacent structures, it would have to be a one-hour fire resistance rating not only on the parapet as opposed to the roof, but for the entire wall of that building, depending on the circumstances, and then for a depth of ten feet horizontally on the roof structure itself. The important thing here is that, while it may be physically an alternative, it is not necessarily practically achievable and it may in fact still violate the code to do it that way.”

In discussion on the motion to postpone, Councilor Heldmeyer noted that the H-Board is “more than willing to postpone cases and work with applicants and come up with subcommittees” but “it has gotten to the point where people who don’t want to bother with that have decided that they can just come to Council and appeal it.” She said she would support the postponement on the assumption that there really would be an exploration of the issues.

The motion for the postponement failed to pass on the following tied Roll Call vote:

For: Councilor Lopez; Councilor Wurzbarger; Councilor Bushee; Councilor Heldmeyer.

Against: Councilor Ortiz; Councilor Pfeffer; Councilor Chavez; Councilor Coss.

The main motion to deny the appeal was defeated on the following Roll Call vote:

For: Councilor Chavez; Councilor Coss; Councilor Heldmeyer.

Against: Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Lopez.

Abstaining: Councilor Bushee.

Councilor Pfeffer moved to refer this back to the H-Board to be placed on the first available H-Board agenda, with the intention of the applicants for the appeal exploring: 1) code requirements in terms of safety and fire safety; and 2) if there is a viable alternative and what it would take in terms of establishing a one-hour roof in lieu of a parapet; and ask the H-Board to consider, if there is an alternative, to consider that alternative.

The motion died for lack of a second.

Councilor Ortiz moved to approve the appeal and deny the H-Board decision. Councilor Pfeffer seconded.

Councilor Bushee said she heard Councilor Pfeffer's motion to say this would be sent back to the H-Board for the H-Board to consider alternatives. She said she heard nothing about the applicant doing that.

Councilor Pfeffer clarified that his motion referred to the applicant doing that.

Councilor Bushee said she would have seconded that motion.

Mayor Pro Tem Lopez asked City Attorney Bruce Thompson if the appeal could in fact be sent back to the H-Board without violating due process in this case.

Mr. Thompson responded that there was no problem sending it back for additional information.

Councilor Pfeffer withdrew his second to Councilor Ortiz' motion.

Councilor Ortiz' motion then died for lack of a second.

Mayor Pro Tem Lopez asked Councilor Pfeffer to repeat his motion.

Councilor Pfeffer moved to remand this back to the H-Board for reconsideration to consider alternatives, that the appellant examine the code for fire safety issues and for the feasibility of doing a one-hour roof in lieu of the parapet, and that the H-Board consider those issues that the applicant brings back.

Councilor Bushee seconded the motion with the stipulation that the Council have sent to it a resolution of whether the UBC is something that is allowed to have exceptions.

Councilor Pfeffer agreed to that.

The motion passed on the following Roll Call vote:

For: Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Lopez.

Against: Councilor Heldmeyer; Councilor Ortiz.

Case No. H-03-63 – APPEAL. 829 Allendale. Paul and Ellen Biderman are Appealing the Historic Design Review Board’s May 13, 2003, Denial of a Proposal to Replace Historic Windows on a Primary Elevation of the Contributing Building Located at 829 Allendale Street in the Don Gaspar Historic District as per Section 14-5.2(D)5a(1) SFCC 1987

Historic Preservation Planner James Hewat reported as follows: “In September 1998, Paul and Ellen Biderman made an application and were approved by the H-Board for the remodeling, including window replacement, of their house at 829 Allendale Street. The 1998 review packet included the historic building inventory form, showing the 1924 Spanish Pueblo Revival building as a Contributing resource to the Don Gaspar Historic District.

“On April 11, 2003, the Bidermans were red-tagged for additional window replacement being undertaken without a building permit or historic review at 829 Allendale Street. At the time of the red tag, the Historic wood three-over-one, and eight-light casement windows, were being stored under the rear portal. The windows appeared to be in good condition at that time.

“As required, the Bidermans stopped work and on May 13, 2003, an application for the replacement of windows on the south and east elevations with windows of similar dimensions was reviewed by the Historic Design Review Board. In the accompanying staff report, the recommendation was that the east elevation was non-primary and that window replacement on that elevation be allowed to continue

as requested. However, staff did recommend that the South Houghton Street elevation of the building should be considered primary and that the historic windows should be reinstalled and, if necessary, install interior windows to improve energy efficiency. The Board voted 4-1 in favor to approve the replacement of the windows on the east elevation, but to rehabilitate the south-facing windows as per staff recommendation.

“Staff’s recommendation and the Board’s majority decision was based on the following points:

“1. The opinion that the Houghton Street elevation of the building is primary as defined in Section 14-12 of the Code. This definition states that a primary façade is one or more principal faces of a structure with features that define the character of the structure’s architecture. Windows are generally considered to be defining features of a building’s character. The features that define the character of this Spanish Pueblo Revival/Southwest vernacular house are the wall-dominated massing, projecting porch, round arch doorways, red-tile roofing, and wood casement and double-hung windows. Four of these five features are found on the Houghton Street elevation and while obscured somewhat by seasonal vegetation on the yard wall, are visible from both Allendale and Houghton Streets. While the Houghton Street elevation is partially obscured by Virginia creeper, the Historic Design Review Board routinely considers elevations not visible from a public way as primary. An example of this is #6 Plaza Chamisal, a historically Significant building that has three primary façades, of which only one is visible from a public way.

“2. Section 14-5.2(D)5a(i) of the Code specifies that if repairable, historic windows on the primary façade(s) of a building shall be repaired rather than replaced. Staff inspected the historic windows at the time of the red tag and judged them to be in good condition and suitable for repair.

“3. The City’s Historic Districts Handbook, adopted by City Council in 1997, states that historic windows shall be repaired or restored wherever possible.

“4. The standards related to windows in the Historic Districts Ordinance and Handbook are consistent with the Secretary of the Interior’s Treatment for Historic Properties, Standards for Preservation. Because the City’s Historic Preservation Ordinance is consistent with these standards, Santa Fe has been designated a Certified Local Government by the National Park Service and receives approximately \$20,000 a year in grants through that program. A failure to uphold the standards could result in a decertification from this program.

“On May 29, 2003, staff wrote the applicant to arrange a meeting with two Board members at 829 Allendale in order to address the concerns outlined in the appeal, specifically, the condition of the removed historic windows. A June 4, 2003, response from the applicant indicated that he did not favor a meeting. Several

weeks later, former HDRB member Peter Brill attempted to arrange an on-site meeting with the Bidermans' staff, Board Chair Purvis, and Board member Barrow. Staff, Board members and Peter Brill arrived at the house on the arranged date. The Bidermans were not present and apparently did not get a message regarding time and place of the meeting. No further meeting was arranged.

"In response to the Board's action, the appellant has filed an appeal on the grounds that:

"1. In the opinion of the applicant, the south side of the house is not a primary façade.

"2. Even if the south side were primary, the subject windows cannot be reasonably repaired.

"3. In the appellants' opinion, the Board's decision prevents the homeowner from complying with the Minimum Maintenance standards of Section 14-70.14K and M, which requires homeowners to repair buildings subject to leakage of water through windows.

"4. The replacement windows are visually indistinguishable from the original windows.

"5. The proceeding is lacking in due process in that the homeowners were not given notice prior to the initiation of these proceedings that their house was a Contributing structure.

"The issue of replacing historic windows replacement is perhaps the single-most encountered item in the Board's review of changes to Contributing and Significant buildings. Almost every meeting of the H-Board includes applications for the rehabilitation of historic windows on Contributing and Significant Buildings. In fact, the issue is not unique to Santa Fe, but very common in communities with preservation and conservation programs around the country. In the 1970s the Federal and State government both enacted tax credit programs that are still in effect to encourage historic preservation, including the rehabilitation of historic windows. The Bidermans would probably qualify for such tax incentives.

"Section 14-5.2(D)5a(i) of the Code is clear in requiring that historic windows on primary façades not be replaced, but repaired when possible. Over the years, staff and the Board have been consistent in applying the definition of primary façade and the preservation of historic windows. Staff urges the Governing Body to uphold the Board's decision as it is clear, fair, and consistent with the ordinance and accepted historic preservation practice."

The floor was opened to comment against this appeal.

Greg Walke was duly sworn. He said, “I think the rules are very clear. If there are windows on one or more primary façades, if they are repairable, they shall be repaired.

“I know that in times past it’s been easy to say that it’s easier to replace windows than to repair them; but I think that window restoration technologies have just become super and there really is no reason not to repair historic windows these days. There are lots of alternatives to wholesale replacement of windows. There are several experts on window replacement on the H-Board now, and I think that they have looked at these and analyzed these windows for some time.”

Mr. Walke urged the Council to uphold the H-Board’s decision.

Speaking to the appellants’ issue about due process and notification, Mr. Walke said no one officially informed him what his zoning was when he purchased his own home, and that is true everywhere. He commented that it is up to the landowner to find that out.

This concluded remarks against the appeal.

Appellant Paul Biderman was duly sworn.

Mr. Biderman asked the Council to overturn the decision of the Historic Design Review Board and allow him and his wife to replace “old, nonfunctional, single pane windows with new ones that are identical in style and much better insulated. These windows are located on a wall of our home that is simply not visible from adjoining streets. To put this matter in its context, this is the only home that Ellen and I have ever owned in our 35 years of marriage. We moved into this house in 1976, we raised our children there, we plan to retire there, and that’s why we have invested so much effort and money over the years in maintaining and remodeling it, always in keeping with the architectural design of our neighborhood....

“Earlier this year, as we planned a kitchen remodel, we wanted to change our kitchen windows on the south and east sides of the house because they would stick badly when we tried to raise or close them. Then we realized it was also time to replace our entryway window, also on the south side of the house, and that was even in worse condition. It was leaky, it allowed the wind to come through, we found pools of water after it rained, we had to patch it with duct tape, and it was insecure — we came home and found it blown open on several occasions.

“So once these plans were made, we got excited, we got impatient; and wanting to maintain the integrity of the house, we ordered excellent quality new windows to match the ones that were approved in 1998, that were in the same shape and style of the ones that we were replacing. But in an exercise of very poor judgment, we did

not seek a permit for this replacement. We should have done so. We have apologized to the Historic Design Review Board for our failure to do so, and we apologize to you as well for this oversight.

“Our contractor had removed all of the windows, tearing out all of the frames, and partially installed all but three of the replacement windows. You can see from the before-and-after photos that are in your packets just how close in appearance the new windows are to the original ones. The work was stopped in early April when the Historic Design Review Board staff told us that they had received an anonymous call, and they red-tagged the project. We have done no further work on the project, on the windows, since that time....

“Staff told us that our house was a Contributing house to the Don Diego Historic District, which we had not previously known; that the south wall on which these windows are located was a primary façade; and they ordered us to restore the original wooden windows on the south wall rather than replace them with new ones. The Review Board, by a vote of three to one, with one abstention — it was not four to one because Board member Purvis shares an office with Mr. Harner and abstained — upheld the staff finding.

“We are asking you to overturn this decision, because we are homeowners attempting to improve on the quality and efficiency of our home while still respecting the historic appearance of our neighborhood by maintaining the design.”

Mr. Biderman asked the Council to also consider that:

1) Their house had not been declared Contributing until 1982, six years after they purchased it, “and so we didn’t even know at the time we bought it that we would someday be restricted from replacing our windows.”

2) Section 14-5.2 of the Code requires them to repair windows when there is leakage of water through the windows.

3) Their home is at the end of a quiet residential street just a block from the boundary of the Historic District with very little vehicle or foot traffic on it.

4) Five of their neighbors have written in support of their position.

5) The kitchen and entryway in which the windows are located were added onto the house at some unknown time before they moved in, so these additions may not even be Contributing. The National Park Service standards indicate that new exterior additions are not within the scope of this treatment of requiring repair rather than replacement.

6) It will cost them thousands of dollars to restore and reinstall the old windows, an unnecessary financial burden, and they will be left with “the same, decades-old, single pane windows that we started to replace. Worse, since our contractor has already removed the frames, we will now be faced with thousands of dollars of additional expense to rebuild the frames, which are destroyed.”

Mr. Biderman pointed out that the decision of the Board “results from their very strict interpretation of the term primary façade, which they have applied to the south façade of our home. Since we own a Contributing house rather than a Significant one... only a primary façade to our home is subject to the requirements regarding these windows. That is why the Board did not object to our replacing the windows on the east side, which faces our backyard, while it did require it on the south wall facing the side yard.

“Common sense tells us there really isn’t anything primary about that south façade. Houghton Street is only a one-way alley that essentially goes just the length of our lot. The south wall faces our side yard, which is separated from Houghton by a brick wall, topped by vines, making it too high to see over. There is no door facing the south façade. And also, please note H-98-180 in the packet. It’s a decision where the west façade was determined not to be a primary façade. The west façade faces Allendale Street, and that is visible from the street; but in that case when we applied, we were allowed to replace a window and replace a garage door in 1998 without considering the fact that this faced out onto Allendale Street, when we are currently talking about a south façade that doesn’t face onto Allendale Street.

“I think this begins to highlight a legal problem with the regulation defining primary façade. It’s so vague as to violate the due process rights of homeowners like us. Now, we made this claim in our first amended supplemental page to our appeal application. It’s omitted from the staff summary that you just heard of our position, but we have made a point of repeatedly asking that our amendment be considered that includes this claim of violation of due process because of the vagueness of the regulation. It simply doesn’t give any guidance to a person of ordinary intelligence, which is what the Supreme Court standard and the Court of Appeals of New Mexico standard is. It forces us to guess at its meaning.

“At the hearing before the Review Board, Mr. Harner, our architect, read the rule one way and Mr. Hewat read it another. And even though the staff agreed that the east wall of the house is clearly not a primary façade because it doesn’t face the street, the regulation says nothing about whether facing a street is relevant to being a primary façade. It’s not in the definition. Due process requires that the term be defined with some clarity so that at least we know what standards are being applied....

“Your decision [in favor of the appeal] doesn’t have to create a precedent for future situations because you need only decide that the Board’s strict interpretation as they applied it to us of their regulation, that is, finding the south wall to be a primary façade, simply isn’t justified under the circumstances of our specific case. But if you overturn the Board’s decision, you will allow us to proceed with this improvement and avoid unnecessary expense that will set back our home improvement efforts.”

Jeff Harner, architect who designed the Bidermans’ kitchen and also did the 1998 remodel, was duly sworn.

Mr. Harner stated that, in 1998, the north façade of the building (the second-most visible façade of the building, visible to somebody driving down Allendale) was approved for replacement of windows and French doors, and for addition of a light well and a railing around it. He said, “No question that that façade is much more visible than the south façade, which is only visible from a couple of spots through the bushes, even in the winter.

“So in terms of consistency of interpreting this ordinance, clearly if that north façade was determined to not be a primary façade, it’s impossible for the south façade to be primary façade.”

Mr. Harner also noted that the north façade is part of the original structure built in 1924. He said the south side was an addition, and the date of construction is unknown.

Mr. Harner stated that, in 1998, the primary façade, which is the west façade where the front door is (facing Allendale), “we replaced the front door with a similar door but a door that had different windows in it. It was on the drawings and it was given full approval by Historic styles, by the building department....”

Mr. Harner stated that the double-hung replacement windows are “almost totally indiscernible from the original windows.” He also pointed out that the new casement windows, if examined closely in the photos provided by staff, “are only different in that they are flatter. The old casement windows had a center mullion that stuck out a little bit from the rest of the window.” He said it would be very simple and not a high cost item to add a piece of wood and create the same profile as the original window.

Mr. Harner said they had no idea in getting into this project “that the definition of “primary façade would change.”

The public hearing was closed.

Councilor Ortiz moved to uphold the appeal based particularly upon the appellants' positions #2 and #4 and to overturn the H-Board's decision.

Councilor Pfeffer seconded the motion for discussion purposes.

Councilor Heldmeyer pointed out to the Bidermans that "if this had gone to the H-Board in the first place, like it should have, for all I know, you'd have these windows."

Councilor Heldmeyer pointed out that, in 1998, when the Bidermans submitted for changes, it clearly said in the submittal packet that their house was a Contributing structure, so she did not see that as an issue in this appeal.

Councilor Heldmeyer stated that she has seen the H-Board "time and time again" come to some agreement with applicants with respect to windows. She said the problem here is that the required discussion didn't take place, and so that wasn't possible.

Councilor Heldmeyer noted the H-Board's position that these windows were a historic part of the fabric of the building, and asked Mr. Hewat what that was based on.

Mr. Hewat called the Council's attention to the Sanborn map in the packet, dated 1949, clearly showing that the addition was there at the time. He said the 1930 Sanborn map also reflects that, so the addition definitely predates 1930.

Mr. Hewat said the windows are clearly period windows just from looking at them.

Councilor Heldmeyer said the operative question was: "Can these windows be saved?"

Mr. Hewat stated that he had a business for two years where he did nothing but rehabilitate old windows, and in his opinion these windows were in very good condition. He said the frames were torn out, so restoring the windows would entail reconstructing the frames.

Mr. Hewat commented that the replacement windows were only superficially similar to the original ones because they open out, the muntins are much fatter, and the glass is much thicker because it is Thermopane.

Councilor Heldmeyer asked what kinds of things the H-Board has done in terms of compromise with people who come in with window requests.

Mr. Hewat responded that, if windows are really deteriorated — 30% of the wood is rotten — then the H-Board will allow the applicant to match the windows very

closely with the existing windows in terms of muntins (within 1/8" of existing), glass thickness, shadow bar, and that kind of thing.

Continuing, Mr. Hewat said, "In most cases — and the H-Board has been very consistent on this count in the three years that I've been here — on primary facades, they require that the windows, if they're not really damaged, be rehabilitated."

Councilor Heldmeyer remarked, "If the Bidermans were coming to us and saying, you know, we met the criteria for replacing windows, and the H-Board wouldn't let us do it, or they wouldn't talk to us, that would be one thing. In this case, the questions weren't asked and it seems to me that to allow this kind of change because someone didn't make the application they should have made is inappropriate."

Councilor Wurzbarger asked why the north side is not considered primary and the south side is, and Mr. Hewat responded that: 1) there is more architectural detail on the south side elevation than on the north elevation; and 2) the windows on the north elevation were replaced at some point and are not the historic windows.

Councilor Wurzbarger asked if something like this has happened before in the H-Board's history; and if so, has there been an opportunity to go back and try to work out something.

Mr. Hewat responded that the H-Board regularly has working groups who work with applicants to come up with a solution.

Mr. Hewat stated that, with respect to appeals, staff always tries to meet with the applicant in advance to try and avert the appeal. He said there were telephone conversations with the Bidermans, who expressed very strongly that they should keep the original sash. He noted that a meeting was arranged but apparently Mr. Biderman was not interested.

Councilor Pfeffer compared the Sanborn map in the packet to the floor plan, and questioned Mr. Hewat's statement that the entryway was there on the Sanborn map.

Mr. Hewat responded that he was referring to the "little yellow area, which is indicated as being frame construction, as opposed to pink, which is masonry." He said the area with the tile roof is the area that is now on the building.

Councilor Pfeffer noted a lot of differences between the map and the plan. He said he was reading 1949, not 1930, as the label for the map.

Mr. Hewat responded that it was a 1949 paste-up but the base map was 1930, and there were no changes between those two dates.

Councilor Pfeffer stated that, when he compared the entry in the floor plan to the “yellow portal” on the map, the entry was substantially smaller. He said the kitchen didn’t appear at all in the Sanborn map, nor did the east portal. He wondered whether this was a situation of “defending historically something that isn’t historic.”

Mr. Hewat responded that it was historic. He said he could tell the date of construction by looking at the finish on the windows and doors.

Councilor Pfeffer asked if this couldn’t have been done at a later date using recycled older materials, and Mr. Hewat responded that this was possible, but he did not think it very likely in looking at the building. He said he looks at hundreds of buildings throughout the year.

Councilor Pfeffer asked how old “historic” is according to code, and Mr. Hewat responded that the baseline is 50 years, so potentially anything constructed before 1953.

Councilor Pfeffer observed that the 1949 Sanborn map did not show “these things which are there now and that we’re talking about, so there’s a window of four years in which this stuff would have happened.”

Mr. Hewat responded that the Sanborn footprints were not very detailed. He agreed, however, that there have been changes on the north and east elevations.

Councilor Pfeffer pointed out that the kitchen was clearly not on the map.

Mr. Hewat said that was correct, but reiterated that the footprints on the Sanborn map really give that level of detail. He said the map’s main concern has to do with construction materials, and clearly there are two different construction materials: the porch area and the rest of the building. He stated that the missing kitchen was an inaccuracy in the Sanborn map.

Councilor Pfeffer said he found this hard to believe, given the level of detail with respect to building proportions, distances between buildings, notches in walls, angles in streets, etc.

Mr. Hewat responded that there are a lot of vagaries with the Sanborn map.

Councilor Pfeffer said, “But to the extent of leaving an entire room off or connections between buildings?”

Mr. Hewat replied, “That’s what we find all the time.”

Councilor Pfeffer indicated that he had a hard time accepting that. He said his question was whether there was a four-year window in which this would have had to be constructed in order for this to come under the ordinance now.

Mr. Hewat pointed out that it doesn't show up on the 1969 map either, although it was unquestionably there in 1969.

Councilor Pfeffer stated that, in 1978, he bought a house on Hillside Avenue and renovated it and did strip windows and replace them, and "there is no way you can tell me that that must have preceded it, because the work I did was in the 1970's. I don't know how you can with certainty pin down that this kitchen and this entryway are actually subject to the code."

Mr. Hewat responded, "It's just my professional opinion, Councilor."

Councilor Heldmeyer asked Mr. Hewat to describe the construction material of the kitchen and porch, and Mr. Hewat responded that the porch is frame construction and the rest of the house is pantile, which was in production from the mid 1920s until the early 1940s.

Councilor Bushee expressed concern about the kind of message it would send to the H-Board to uphold this appeal. She said it would have been different had the Bidermans gone through the process and were appealing that decision.

The motion to grant the appeal was defeated on the following Roll Call vote:

For: Councilor Lopez; Councilor Ortiz; Councilor Pfeffer.

Against: Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Wurzburger.

In voting, Councilor Ortiz commented, "I am truly astounded that a project for a commercial restaurant on Canyon Road, in which there was actual construction, that didn't get a permit, didn't go through the process, would be approved; and then for consistency's sake to send a message to the H-Board that they should be respected.....It makes no rational explanation to think that what took place at Geronimo's is in any way consistent with the H-Board decision when you put it up against this particular decision."

Councilor Coss moved to uphold the H-Board decision. Councilor Heldmeyer seconded the motion, which failed to pass on the following tied Roll Call vote:

For: Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer.

Against: Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger.

Councilor Wurzburger moved to remand this to the Historic Design Review Board to work out an alternative that is acceptable to the Bidermans and does not involve removing the windows.

Councilor Pfeffer seconded the motion.

Councilor Heldmeyer proposed an amendment to restate the amendment as follows: to remand this to the Historic Design Review Board to work out an alternative that is acceptable to the Bidermans and ~~does not involve removing the windows.~~

The amendment was accepted as friendly.

The motion passed on the following Roll Call vote:

For: Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee.

Against: None.

[The Afternoon Session was continued.]

COMMUNICATIONS FROM THE GOVERNING BODY

Councilor Coss

Councilor Coss recalled that the Council passed a resolution regarding the Forest Guardians and the EPA grant on the Santa Fe River, which “kind of fizzled out when Ron Sandoval retired.” He asked staff to get it going again. He said he could give staff the name of three riparian specialists who could come up with recommendations. He stated that he wanted an unbiased scientific recommendation

that would be acceptable to the Forest Guardians, EPA and the downstream neighbors in La Cienega.

Councilor Coss said he would concur with Councilor Wurzburger that the minutes of the Historic Design Review Board should be more detailed. He said they were not helpful as background in the appeals the Council heard tonight.

Councilor Bushee

Councilor Bushee submitted a resolution supporting a proposal that the Governor has put out, to provide \$2 million in assistance to teachers, nurses, police and fire officers and other critical service workers.

Councilor Bushee said the Casa Solana neighborhood wants their medians planted. She said it has been three or four years. She stated that Planning & Land Use has not gotten back to her on another situation with the drainage and road issue. She said she would provide details to Mr. Romero after the meeting. She said they also want something happen on the access from the backside of Casa Solana.

Councilor Ortiz

Councilor Ortiz submitted a resolution committing to improve the Plaza by taking \$150,000 from the Lodgers Tax Fund, and to direct staff to make recommendations regarding the continued use of the Lodgers Tax Fund for continued and increased maintenance of the Plaza.

Councilor Ortiz asked that the resolution go to OTAB, Finance, and Public Works.

Councilor Heldmeyer

Councilor Heldmeyer submitted a resolution, requested by staff, having to do with the recycled asphalt paving program. She said there was some leftover asphalt this year, and there were a number of neighborhoods interested in having it put on, and staff discovered that there was no policy for that. She said the resolution is the first draft of a policy, which may change as it goes through committee.

Councilor Heldmeyer asked that the resolution go to Public Works and Finance.

Councilor Heldmeyer stated that, despite what was said by some individuals under Petitions from the Floor, the Public Works Committee is not considering the bandstand at its meeting tomorrow. She said she understood it would be the meeting after that, because it was to go out to bid next week, and the Public Works Committee would be looking at the contract on it. She stated that a lot of people

have worked for a long time on this, and not everyone is going to agree with everything the City does, “but it seems to me that the people who have put up the money for this have gone through some public process. It has been around for a long time, it was presented to Council, we all saw pictures, they were all on TV, and the idea that, at this point, someone wants to totally redo it — I just don’t know how realistic that is if we want to get it built this winter.”

Councilor Pfeffer asked if it would be a public hearing at Public Works, and Councilor Heldmeyer said she could make it a public hearing.

Mayor Pro Tem Lopez

Mayor Pro Tem Lopez submitted a resolution to expedite the planning and implementation of the City’s response to the bark beetle infestation. She said there are 3,000 acres in the Northwest Quadrant, and possibly Lance Tyson in GIS can do a vegetation overlay to get a percentage of how many trees are involved, which could result in a plan. She stated that the Urban Forester has said the City has to decide now or very soon how it wants to re-vegetate.

Mayor Pro Tem Lopez submitted a resolution calling on various bodies to get together and see what can be done to double the number of mentors in Santa Fe in the coming year.

Mayor Pro Tem Lopez said she and Councilor Ortiz were challenging other Council districts to see which could pick up the most trash on September 27.

ADJOURN

Its business completed, the Governing Body adjourned the meeting at approximately 11:40 p.m.

Approved by:

Mayor Larry A. Delgado

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully Submitted:

Judith S. Beatty, City Council Reporter

